

ORIGINAL

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FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

JAN 12 2006

at 11 o'clock and 56 min. A. JTP
 SUE BEITIA, CLERK

Attorneys for Claimants/Respondents and
 Plaintiffs MATTHEW ISHAM, individually and
 as Guardian ad Litem for, HAYDEN ISHAM,
 a minor and ROXANNE BEST ISHAM

UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

IN THE MATTER OF THE) Civil NO. CV05-00037 HG-BMK
COMPLAINT OF BLUE) [3 Consolidated Cases]
DOLPHIN CHARTERS, LTD.)
AND TERRY DONNELLY, AS) MATTHEW ISHAM, individually and as
OWNERS OF THE VESSEL) Guardian ad Litem for, HAYDEN ISHAM,
M/V BLUE DOLPHIN, O/N) a minor and ROXANNE BEST ISHAM'S
1082213, FOR) SEPARATE AND CONCISE
EXONERATION FROM) STATEMENT IN SUPPORT OF REPLY
AND/OR LIMITATION OF) TO PLAINTIFF/DEFENDANT BLUE
LIABILITY) DOLPHIN CHARTERS, LTD. AND
) LIMITATION PLAINTIFF TERRY
) DONNELLY'S MEMORANDUM IN
) OPPOSITION TO MATTHEW ISHAM,
) INDIVIDUALLY AND AS GUARDIAN
) AD LITEM FOR HAYDEN ISHAM, A
) MINOR AND ROXANNE BEST
) ISHAM'S MOTION FOR PARTIAL
) SUMMARY JUDGMENT
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)
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) CIVIL NO.: CV 04 00559 HG-BMK

Defendants.

DENNIS CLAYPOOL,)	CIVIL NO.: CV 04 00570 HG-BMK
individually and as Guardian ad)	
Litem for KRISTEN)	
CLAYPOOL, a minor, SHERYL)	
CLAYPOOL, SCOTT)	
CLAYPOOL, AND KRISTEN)	
CLAYPOOL,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
CAPTAIN ANDY'S SAILING,)	
INC., BLUE DOLPHIN)	
CHARTERS, LTD. And BLUE)	
DOLPHIN DIVING, LTD.,)	
)	
Defendants.)	

MATTHEW ISHAM, individually and as Guardian ad Litem for,
HAYDEN ISHAM, a minor and ROXANNE BEST ISHAM'S SEPARATE
AND CONCISE STATEMENT IN SUPPORT OF REPLY TO
PLAINTIFF/DEFENDANT BLUE DOLPHIN CHARTERS, LTD. AND
LIMITATION PLAINTIFF TERRY DONNELLY'S MEMORANDUM IN
OPPOSITION TO MATTHEW ISHAM, INDIVIDUALLY AND AS
GUARDIAN AD LITEM FOR HAYDEN ISHAM, A MINOR AND ROXANNE
BEST ISHAM'S MOTION FOR PARTIAL SUMMARY JUDGMENT

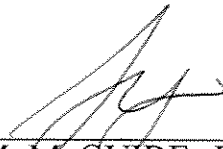
Matthew Isham, individually and as Guardian ad Litem for, Hayden Isham, a minor, and Roxanee Best Isham (hereinafter "Isham Claimants") submit their Separate and Concise Statement in Support of Reply to Limitation Plaintiff/Defendant Blue Dolphin Charters, Ltd.'s and Limitation Plaintiff Terry

Donnelly's Opposition to Isham Claimant's Motion for Partial Summary Judgment filed on December 8, 2005.

Isham Claimants do not dispute paragraphs 1, 5, 6, 9 - 14, 18 - 23, 25 - 30 of Limitation Plaintiff's Separate and Concise Statement. All other paragraphs are either partially disputed or disputed in their entirety and Isham Claimants offer the following additional material facts in support thereof:

MATERIAL FACT	FACTUAL SUPPORT
1. Matthew Isham was never provided with written instruction regarding taking a dive float. Taking a dive float was a suggested, not a mandatory, procedure.	Decl. of Steven McGuire, Ex. "A" depo. of Matt Isham, p. 45: 17 - 24; p. 52: 9 - 12, 20 - 25.
2. Terry Donnelly admitted under oath that there was no written mandatory requirement for taking floats on dives.	Decl. of Steven McGuire, Ex. "B", depo. of Terry Donnelly, p. 123: 7 - p. 125: 4.
3. David Woolley testified that after a brief stop, the Spirit of Kauai motored out to sea before turning toward Mokol'e Point and was thus 300 yards from the Blue Dolphin's anchorage at that point.	Decl. of Steven McGuire, Ex. "C", depo. of David Woolley, p. 73: 17 - p. 75: 4.

Dated: Redondo Beach, California, January 11, 2006.



STEVEN M. MCGUIRE, *Pro Hac Vice*
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I certify that this document is in 14 point Times New Roman font and contains 318 words and does not exceed the page or word limitations set forth in Local Rule 7.5(b).



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